

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 172 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

PATEL PRINTING PRESS

Appearance:

MR MANISH R BHATT for Petitioner

MR PRANAV G. DESAI for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

Date of decision: 29/08/98

ORAL JUDGEMENT

(Per R.K.Abichandani, J.)

The Revenue has suggested the following two

questions seeking a direction on the Income Tax Appellate Tribunal to forward statement of case in respect thereof under Section 256 (2) of the Income Tax Act, 1961:

"1. Whether, the Appellate Tribunal is right
in law and on facts in cancelling the
order passed by the Commissioner of
Income Tax under Section 263 of the Act ?

2. Whether, the Appellate Tribunal is right
in law and on facts in not appreciating
the fact that in the case of the sister
concern, namely, M/s. Duphant & Company
the concerned Assessing Officer had come
to a specific finding that the income
assessed therein in fact belonged to the
present assessee ?"

2. The two questions are suggested virtually to converge on the same aspect as to whether the firm in question was a benami concern. The Tribunal in its order dated 27th February, 1997 allowed the appeal against the order of the C.I.T. made under Section 263 of the Act. After taking into account the rival submissions of the parties, the Tribunal found that the Dy.CIT (Assessment) completed the assessment under Section 143 (3) on 31st March, 1989 after going through the books of accounts and after taking note of the purchases of ink, paper etc. made from M/s. Duphant & Company and after applying his mind. It was held that such an order cannot be called erroneous one as the same was passed in accordance with law. This obviously was a valid reason for interfering with the order made under Section 263 of the Act. The Tribunal itself also noted that M/s. Duphant & Company was in existence ever since 1983-84 and never in the past the income of M/s. Duphant & Company was clubbed with that of the assessee firm. It was observed that, simply because the assessee firm, as in the past, also purchased ink and paper from M/s. Duphant & Company, that too at the prevailing market rates, it will not make M/s. Duphant & Company a firm belonging to the assessee firm or, for that matter, benami of the assessee firm. The question whether the firm M/s. Duphant & Company was benami of the assessee firm is purely a question of fact and the decision of the Tribunal, therefore, does not raise any question of law. Rule is, therefore, discharged with no order as to costs.

(KMG Thilake)
